

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,
v.
Joseph Minh McReynolds
Defendant.

No. CR-18-01170-001-PHX-GMS

ORDER

Pending before the Court is the Motion to Suppress of Defendant Joseph Minh McReynolds (Doc. 33). For the following reasons the motion is denied.

BACKGROUND

On June 19, 2018, Officer G. Varela of the Colorado River Indian Tribes Police Department (“CRITPD”) pulled over a car for speeding—he clocked the car traveling at 51 miles per hour in a 35 mile-per-hour zone—in Parker, Arizona. Officer Varela, while an employee of the CRITPD, is also certified by the Arizona Peace Officer Standards and Training Board, and so is authorized to enforce both tribal and state law. Officer Varela was wearing a body camera during the incident and recorded his interactions with the two individuals in the car: Travis Malara, the driver, and Defendant, the passenger.

Officer Varela approached the car and asked Malara if he was aware how fast he had been driving. Officer Varela asked Malara for his driver's license, and Malara stuttered as he answered. Officer Varela interpreted this action as Malara acting nervously. He therefore requested identification from Defendant as well. Because Officer Varela

1 believed Malara was acting nervously, he asked the two men if they had any weapons.
2 Defendant informed Officer Varela that he had a firearm in the front-right pants pocket.

3 Officer Varela then informed Defendant that he would come around to the passenger
4 side of the vehicle and remove the weapon from the vehicle. He told Defendant to not
5 make any sudden moves and keep his hands in view. Officer Varela approached
6 Defendant, asked if the gun had ammunition chambered (it did), and removed it from
7 Defendant's pocket. When asked if he had any other weapons, Defendant said no.

8 Officer Varela then called in Malara's and Defendant's names to dispatch to conduct
9 a records check. While the check was being conducted, Officer Varela asked the two men
10 if there were any drugs in the car and if Defendant had anything else on his person.
11 Defendant said no. Officer Varela then called in the firearm's serial number to dispatch.
12 While the records checks were being performed, Officer Varela and other officers who had
13 arrived removed Malara and Defendant from the vehicle.

14 The records check revealed that Malara had a non-extraditable warrant issued for
15 him in California, and that there may also have been a "mental health order" for Malara.
16 Dispatch also informed Officer Varela that Defendant had "major priors in the last seven
17 years" and that he was currently on supervised release. Officer Varela therefore decided
18 to request a more in-depth check of Defendant to determine if he was a prohibited
19 possessor. However, dispatch was unable to contact Defendant's probation officer to
20 confirm that he was a prohibited possessor. The stop ended less than twenty minutes after
21 it began, but Officer Varela informed Defendant that CRITPD would be keeping
22 Defendant's firearm until it could confirm that he was not a prohibited possessor. Officer
23 Varela did not issue a citation to Malara, but instead gave him a verbal warning.

24 Two days later, Defendant's probation officer informed CRITPD that Defendant
25 was a prohibited possessor. CRITPD communicated the information to the United States
26 Attorney's Office, which then filed this action against Defendant, charging him with a
27 single count of prohibited possession. Defendant now moves to suppress all evidence
28 obtained during the traffic stop as well as any statements he allegedly made while he was

1 detained by Officer Varela during the traffic stop.

2 DISCUSSION

3 The Fourth Amendment to the United States Constitution provides that “[t]he right
 4 of the people to be secure in their persons, houses, papers, and effects, against unreasonable
 5 searches and seizures, shall not be violated.” U.S. Const. amend. IV. Traffic stops by law
 6 enforcement implicate the Fourth Amendment “because stopping an automobile and
 7 detaining its occupants constitute a seizure . . . even though the purpose of the stop is
 8 limited and the resulting detention quite brief.” *Delaware v. Prouse*, 440 U.S. 648, 653
 9 (1979); *United States v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006). For a traffic stop
 10 to be constitutional, law enforcement officers must have “reasonable suspicion” that a
 11 person in the car is breaking the law. *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct.
 12 530, 536 (2014); *Choudhry*, 461 F.3d at 1100 (citing *United States v. Lopez-Soto*, 205 F.3d
 13 1101, 1104 (9th Cir. 2000)). “Officers have reasonable suspicion when specific, articulable
 14 facts[,] together with objective and reasonable inferences, form the basis for suspecting
 15 that the particular person detained is engaged in criminal activity.” *Choudhry*, 461 F.3d at
 16 1100 (quoting *United States v. Montero-Camargo*, 280 F.3d 1122, 1129 (9th Cir. 2000)
 17 (en banc)) (internal quotation marks omitted).

18 I. Analysis

19 A. Officer Varela had authority to make the traffic stop.

20 Defendant contends that Officer Varela, as a member of the CRITPD, lacked
 21 authority to enforce the law against Malara and Defendant because neither are tribal
 22 members or nonmember Indians. “An Indian tribe’s authority to enforce criminal laws on
 23 tribal land is nuanced. On tribal land, a tribe has inherent powers as a separate sovereign
 24 to enforce criminal laws, but only as to its tribal members and nonmember Indians.” *United*
 25 *States v. Cooley*, 919 F.3d 1135, 1141 (9th Cir. 2019) (citing *United States v. Lara*, 541
 26 U.S. 193, 197–99 (2004)). Tribes’ “authority over non-Indians is more limited. A tribe
 27 has no power to enforce tribal criminal law as to non-Indians, even when they are on tribal
 28 land.” *Id.* But “[t]ribal officers are often delegated authority by a state or the federal

1 government to act broadly on its behalf.” *Id.* at 1141 n.2. The normal limitations on the
 2 authority of tribal law enforcement officers “do not apply to deputized officers.” *Id.*

3 But Officer Varela, although a member of CRITPD, a tribal entity, is also an
 4 AZPOST-certified officer, and thus has authority to enforce Arizona state law. (See
 5 Government’s Exhibit 1). Defendant’s argument that Officer Varela lacked authority to
 6 conduct the traffic stop is therefore without merit.

7 **B. The traffic stop was justified.**

8 Law enforcement officers have reasonable suspicion sufficient to justify a traffic
 9 stop if they observe a traffic violation. *Whren v. United States*, 517 U.S. 806, 810 (1996);
 10 *United States v. Willis*, 431 F.3d 709, 714–17 (9th Cir. 2005). Courts look at the totality
 11 of the circumstances when determining whether reasonable suspicion has been established.
 12 *United States v. Cortez*, 449 U.S. 411, 417 (1981).

13 Officer Varela’s decision to pull over Malara’s vehicle did not violate the Fourth
 14 Amendment. Officer Varela’s report indicates that he observed the vehicle traveling
 15 sixteen miles per hour over the posted speed limit in violation of both tribal and state law.
 16 See Ariz. Rev. Stat. § 28-701; CRIT Law and Order Code § 16-6801. Officer Varela
 17 testified that he used both visual estimation and a radar gun to determine that Malara was
 18 speeding. Defendant argues that there is no evidence establishing the reliability of either
 19 the radar gun or Officer Varela’s visual estimation. But Officer Varela’s testimony at the
 20 hearing established that his vision was unimpaired and that he had a clear view of the
 21 vehicle on the day of the stop. His testimony further established that his radar gun was in
 22 working order and that he checked the radar gun’s performance each day before beginning
 23 his patrol. Officer Varela’s use of the radar gun to clock the vehicle’s speed, together with
 24 his visual estimation, is sufficient reasonable suspicion to justify the traffic stop. *United*
 25 *States v. Cruz-Castro*, 378 F. App’x 632, 634 (9th Cir. 2010).

26 **C. Officer Varela was justified in removing Defendant’s firearm.**

27 Since traffic stops may be “especially fraught with danger to police officers,”
 28 *Michigan v. Long*, 463 U.S. 1032, 1047 (1983), “[t]he risk of harm to both the police and

1 the occupants is minimized if the officers routinely exercise unquestioned command of the
 2 situation,” *Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (quoting *Michigan v. Summers*,
 3 452 U.S. 692, 703 (1981)). During a traffic stop, officers are “authorized to take such steps
 4 as [are] reasonably necessary to protect their personal safety and to maintain the status quo
 5 during the course of the stop.” *United States v. Hensley*, 469 U.S. 221, 235 (1985). Such
 6 steps may reasonably include questioning the vehicle’s occupants regarding any weapons
 7 that may be in the car. *See United States v. Willis*, 431 F.3d 709, 717 (9th Cir. 2005) (“Once
 8 the police stopped Willis, they could, within reason, . . . question Willis about weapons for
 9 their own safety.”).

10 As previously discussed, Officer Varela had sufficient reasonable suspicion to
 11 justify pulling Malara’s car over. Once the stop had lawfully happened, Officer Varela
 12 was permitted to ask questions of the vehicle’s occupants that were unrelated to the reason
 13 for the traffic stop even if he lacked separate reasonable suspicion to ask whether either of
 14 the men had weapons. *See United States v. Mendez*, 476 F.3d 1077, 1080–81 (9th Cir.
 15 2007) (holding that so long as officers’ questioning does not prolong the stop, “expanded
 16 questioning need not have been supported by separate reasonable suspicion.”). The
 17 Supreme Court has rejected the premise that officers must have “independent reasonable
 18 suspicion in order to question [an individual] . . . because the questioning constitute[s] a
 19 discrete Fourth Amendment event.” *Muehler v. Mena*, 544 U.S. 93, 100–01 (2005).¹
 20 Officer Varela’s question—whether the men had weapons—did not unreasonably prolong
 21 the traffic stop. Varela asked limited questions of the vehicle’s occupants, including

22 ¹ For similar reasons, it was also permissible for Officer Varela to ask Defendant for
 23 identification. *See United States v. Diaz-Castaneda*, 494 F.3d 1146, 1152–53 (9th Cir.
 24 2007) (holding that a law enforcement officer could request a passengers’ identification
 25 without implicating the Fourth Amendment: “The police may ask people who have
 26 legitimately been stopped for identification without conducting a Fourth Amendment
 27 search or seizure.”) (citing *Hiibel v. Sixth Judicial Dist. Ct. of Nev., Humboldt County*, 542
 28 U.S. 177, 185 (2004) (“In the ordinary course a police officer is free to ask a person for
 identification without implicating the Fourth Amendment.”)); *see also United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007) (“[B]ecause passengers present a risk to officer
 safety equal to the risk presented by the driver, an officer may ask for identification from
 passengers and run background checks on them as well.”) (citation omitted); *United States v. Soriano-Jarquin*, 492 F.3d 495, 500 (4th Cir. 2007) (“Just as the officer may ask for the
 identification of the driver of a lawfully stopped vehicle, so he may request identification
 of the passengers also lawfully stopped. No separate showing is required.”).

1 whether the men had weapons. Given that Malara had been driving well above the posted
 2 speed limit and appeared nervous when Officer Varela asked him simple questions, and
 3 since traffic stops can be “especially fraught with danger to police officers,” *Michigan v.*
 4 *Long*, 463 U.S. 1032, 1047 (1983), and “[t]he risk of harm to both the police and the
 5 occupants is minimized if the officers routinely exercise unquestioned command of the
 6 situation,” *Wilson*, 519 U.S. at 415, it was reasonable for Varela to ask the vehicle’s
 7 occupants if they were carrying weapons. Defendant has not contended, and the Court’s
 8 review of the evidence discloses, that the questioning did not extend the stop’s duration.

9 Officer Varela was also justified in removing the weapon from Defendant’s pocket
 10 once he was informed of its existence. *See Willis*, 431 F.3d 717 (“Once Willis informed
 11 the officers that he was carrying a firearm, the officers were entitled to seize the firearm in
 12 order to avoid any possibility that Willis would use it against them.”). Asking the question
 13 and then calmly removing the weapon from Defendant’s pocket were actions “reasonably
 14 necessary to protect [Varela’s] personal safety” during the traffic stop. *See Hensley*, 469
 15 U.S. at 235.

16 **D. *Miranda* does not require the exclusion of Defendant’s statements.**

17 Defendant argues that his statements to Officer Varela must be suppressed because
 18 he was not Mirandized. But “persons temporarily detained pursuant to [traffic] stops are
 19 not ‘in custody’ for the purposes of *Miranda*.” *Berkemer v. McCarty*, 468 U.S. 420, 440
 20 (1984). Since Defendant was not “in custody,” no *Miranda* warnings were required.
 21 Officer Varela simply asked whether the men had weapons in the car—a question he as
 22 permitted to ask without needing any separate reasonable suspicion. *See Mendez*, 476 F.3d
 23 1077, 1080 (9th Cir. 2007).

24 **CONCLUSION**

25 Officer Varela had sufficient reasonable suspicion to pull over Malara’s vehicle.
 26 Once he did so, he could ask questions unrelated to the traffic stop even if he did not have
 27 separate reasonable suspicion to support the question. Once Defendant stated that he had
 28 a gun in his pocket, Officer Varela was justified in removing the firearm from Defendant’s

1 pocket for the duration of the stop to avoid any possibility that the gun would be used
2 against him or other law enforcement officers. Finally, because Defendant was not "in
3 custody" for purposes of *Miranda*, his statements to Officer Varela need not be suppressed.

4 **IT IS THEREFORE ORDERED** that the Motion to Suppress of Defendant Joseph
5 Minh McReynolds (Doc. 33) is **DENIED**.

6 Dated this 3rd day of July, 2019.

7 
8 G. Murray Snow
9 Chief United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28